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Ct. Brf. of Plaintiff in Error

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Supreme Court of the United States

OCTOBER TERM, A. D. 1900.

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DANVILLE WATER COMPANY, ... Plaintiff in Error,

vs.

CITY OF DANVILLE, ... Defendant in Error.

ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

Additional Brief for Plaintiff in Error.

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vs.

CITY OF DANVILLE, ... *Defendant in Error.*

Error to the Supreme Court, State of Illinois.

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This case is sufficiently stated in the brief of Mr. Davies. The errors assigned raise the question of the validity of the contract between the Danville Water Company and the City of Danville, the right of the State of Illinois to pass any law which would authorize the City of Danville to impair the obligation of this contract, the right of the City of Danville to pass any ordinance changing this contract; and they raise the further question as to whether such legislation, State and municipal, deprives the Danville Water Company of its property without compensation and without due process of law.

There are three cases which are being heard by this Court at this time from the Supreme Court of Illinois. The first of these is the case of the Rogers Park Water Company

vs. Fergus. This case involves the question as to whether a certain ordinance granting to the Rogers Park Water Company the right to establish water works, and fixing a rate of charges for public and private consumers of water, is not contractual in its character, to the extent that the subsequent admission of Rogers Park into the City of Chicago will not allow that City, by ordinance, to change the schedule of rates as to private consumers.

The next case is that of the Freeport Water Company vs. the City of Freeport, wherein is involved the question whether the City of Freeport, after having granted to an individual assignor of the Freeport Water Company the right to establish water works and use the streets for mains, and having prescribed duties to be performed in the distribution of water to the City and its citizens, and fixed a rate to be paid by the City for the public water supply, can impair this contract under subsequent legislative act or municipal ordinances.

This is the third case of the series.

Elaborate briefs have been filed on the hearing of all the cases, and the diligence and learning of counsel has been such that we believe substantially all authorities worthy of serious note have been cited to the Court. We will, therefore, in the course of this argument, not endeavor to cite cases in support of the propositions which we endeavor to maintain, but content ourselves with a simple statement of the legal issues here involved and the principles which should govern their solution.

The Parties Intended to Contract.

That the Danville Water Company and the City of Danville intended to make a contract cannot be questioned. The original ordinance (R., 5) is entitled as follows:

"An Ordinance providing for a supply of water to the City of Danville and its inhabitants, authorizing the Danville Water Company to construct and maintain water works, contracting with said Company for a supply of water for public use and giving said City or town right to purchase said works."

The first clause of this ordinance grants to the Danville Water Company for thirty years a franchise to construct and maintain within and near the City of Danville, water works for supplying the City and the inhabitants thereof with water.

The second section states the source of supply, prescribes the character of pump-house, pumping engines, stand pipe and mains which are to be erected and furnished by the Water Company. "The fire hydrants rented by said City as hereinafter stated, shall be of a design of appropriate style and good efficiency." A provision is made for test of the power and capacity of the water works on their completion.

The third section prescribes when the Water Company shall begin its construction and what shall be the progress made by it. The fourth section is devoted to prescribing regulations for the laying of mains. The fifth section prescribes when and where and under what circumstances the City shall have the right to require the Water Company to extend its mains. The sixth section prescribes the rates to be charged to private consumers.

The seventh section provides for the right of the City at the expiration of five, ten and twenty years, and at the expiration of thirty years, to buy the works with their privileges and appurtenances, at a valuation to be ascertained in accordance with the terms of the section.

Section 8 is as follows: "In consideration of the benefits which will be derived by the said City and its inhabitants

from the construction and operation of the said water works, and in further consideration of the water supply hereby secured for public uses, and as an inducement to said Water Company to accept the provisions of this ordinance and contract, and to enter into the construction of said water works, the rights and privileges hereby granted to and vested in said Water Company shall remain in force and effect for thirty years from the passage of this ordinance, and for the same consideration and the same inducement the City of Danville hereby rents of the Danville Water Company, for the uses hereinafter stated, 100 fire hydrants of the character hereinafter described, and for and during the term of thirty years from the passage of this ordinance, and agrees to locate them promptly along the line of the street mains as demanded of said Water Company, and in submission by it to said City of a plan of the location of said street mains, and agrees to use the said hydrants carefully, and to pay said Water Company for any injury which may happen to any of them when used by any officer, servant or member of the Fire Department of said City, and agrees to pay rent for said 100 hydrants at the rate of seventy-five ($75.00) dollars each per year; and agrees to pay during the unexpired term of said ordinance and privilege for any additional fire hydrants which the City may hereafter locate, at the rate of sixty-two and 50-100 ($62.50) dollars each per year for the next forty (40) additional hydrants; and for all hydrants in excess of one hundred and forty (140) at the rate of fifty ($50.00) dollars each per year, all of which sums will be paid by said City to said Water Company, beginning from the dates when each of such hydrants shall be put in successful operation, in quarterly installments on the first days of February, May, August and November of each year, and terminating on the expiration of said term of thirty (30) years, or upon the purchase of said

works and their privileges and authority by the said City." (R., 9–10.)

Section 9 of the ordinance prescribes how the fire hydrants rented by the City are to be used.

Section 10 provides that the Water Company shall constantly keep all fire hydrants rented by the City supplied with water and gives in charge to the Chief of the Fire Department of the City, these fire hydrants, and provides that the City may, where the fire hydrant is out of repair deduct from "said hydrant rental account" a certain sum.

In the 11th section the Water Company, in consideration of the City renting such number of fire hydrants, agrees to gratuitously furnish certain drinking fountains and also water free for City offices.

The 12th and 13th sections need not be noticed. The 14th provides as follows:

> "This ordinance will become binding as a contract upon the said City of Danville in the event that the said Danville Water Company shall, within ten days from the passage of this ordinance, file with the City Clerk of said City its written acceptance of the terms and conditions of this ordinance, and upon such acceptance this ordinance shall constitute a contract and shall be the measure of the rights and liabilities of the said City and the said Water Company."

Within this ten days the Danville Water Company did accept the terms, obligations and conditions of the ordinance. It proceeded to erect its plant and to furnish water to the City.

Various ordinances were passed after the main one providing for the extension of the pipe system of the Danville Water Company, and contracting with it for additional public

fire hydrants. Sometimes the language "contracting" is used and sometimes the language "renting" is used.

(R., 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29 and 31.)

There is in the case no dispute of any fact, the whole matter being an issue of law. We have said enough we think to establish the first position beyond controversy, *i. e.*, that the City of Danville and the Danville Water Company did contract. The terms of the contract are without ambiguity or uncertainty, definite in point of time, in point of reciprocal services and obligations, and in point of money consideration to be paid by the City of Danville to the Danville Water Company, and of plant to be erected and maintained by the Danville Water Company.

Our second proposition is:

That the Parties Had the Right to Make This Contract.

That the Danville Water Company had the right upon its side to make the contract is not disputed. Did the City of Danville have such right? We can not do better than state the authority granted to the City of Danville by the Legislature of Illinois to make this contract, as set forth in the opinion of the Supreme Court of Illinois in the City of Danville vs. Danville Water Company, 178 Ill. At pages 308 and 311 the Court says:

> "By an Act, approved April 9, 1872, in force July 1, 1872, entitled 'An Act to enable cities . . . . to contract for a supply of water for public use and to levy and collect a tax to pay for water so supplied, it was provided in Sections 1 and 2 as follows:' (1) 'That in all cities . . . . where water works may hereafter be constructed by an

incorporated company, the city . . . . authorities of such cities . . . . may contract with such incorporated company for a supply of water for public use for a period not exceeding thirty years.' (2) 'Any such city . . . . so contracting may levy and collect a tax on all taxable property within such city . . . . to pay for the water so supplied.'"

"This Act of April 9, 1872, conferred on cities the power to contract with an incorporated company for a supply of water for public use for a period not exceeding thirty years. No question is made by either party to this litigation as to the validity of this Act so far as it gave the right to contract for thirty years. Counsel for the City disclaim any intention of questioning the validity of a contract to supply water for thirty years. Therefore we pass no opinion upon this question. The contention is that the City had no power to make a contract to pay fixed and unalterable rates for thirty years, and not that the City did not have power to make a contract with the water company that the latter should supply water for thirty years."

We quote now from page 311 of the same opinion:

"In Section 1 of Article 10 of the City and Village Act, approved April 10, 1872, it is provided as follows:

"'The City Council . . . . shall have the power to provide for a supply of water . . . . by the construction and regulation of . . . . water works, and to borrow money therefor, and to authorize any person or private corporation to construct and maintain the same at such rates as may be fixed by ordinance and for a period not exceeding thirty years.'"

Admitting that these two Acts should be construed in *pari materia*, we have the authority granted to the munici-

pality by the Legislature in the one Act to contract with such incorporated company for the supply of water for public use for a period not to exceed thirty years, and in the other Act a legislative authority is given to the municipality "to authorize any person or private corporation to construct and maintain the same (water works) at such rates as may be fixed by ordinance and for a period not exceeding thirty years."

There is a distinction running through the books, which is too well established to be controverted, between the legislative power belonging to a municipal corporation and the power granted to it to deal with its ordinary business interests. There is confided to a municipality a large degree of police authority, an authority to so regulate the community within its boundaries as will induce good order, health and sound morality. But besides this, of necessity, a municipal corporation must and does have the right to enter into contracts for the supply to itself and the citizens those things which must be supplied by the public, or through a contract made with the public rather than by individual effort. Among these are: protection from fire, the establishment of a department for this purpose, the purchase of engines and other apparatus; the supply of light and the supply of water. In reference to these last it is impossible for any individual, without a public franchise, to answer the necessities of the community. The supply of light and water require the use of the public highways, and the City is under the same necessity to have for itself water and light as is the individual member of the community. A municipality, therefore, must have the two kinds of authority. The one, for the want of a better term, we may designate legislative, the other, contractual.

When we come to consider whether a municipality has power to contract upon a given subject, there is no reason

why its warrant of attorney from the Legislature should be construed in any different way from that which it would be construed if we were dealing with any other business corporation. It is one thing to say that a franchise granted by the Legislature, either directly or through a municipality, should be strictly construed and not extended beyond a fair meaning of the language employed in the grant, but there is no such reason for applying this rule when we come to construe the power of the municipality to make contracts which are essential to its own well being and that of the community governed by it.

When an individual or corporation is invited to enter into such a contract as the one now before the Court, such individual or corporation has the right to regard the authority conferred upon the municipality by the Legislature as not bound down by artificial or rigid or narrow rules of construction, but by such rules as would, to ordinary intelligence, interpret the meaning of the language used in granting the power to contract.

In the case at bar the Danville Water Company has invested a large amount of money in the erection of water works in and near the city of Danville. Its plant is of the character prescribed by the City of Danville, and has undergone the test of completeness and efficiency laid down by the governing authority of the City. Obviously no business man would have engaged in an enterprise involving so great an outlay of capital without considering the question as to what return he was to receive for his investment. Two things would be looked into. One, the length of time for which he was to enjoy the public franchise; second, what was to be the return to him for his outlay during this period of time. His return would come from two sources—water supplied to the municipality, and water supplied to the citizens. In refer-

ence to the last there could be no certainty as to the return.

No obligation could be imposed upon any individual citizen to become a patron of the Water Company at all, or, if he should become a patron, no obligation could be imposed upon the individual citizen to become such for any definite amount or definite length of time. But the municipality could secure to the investor some return from itself for the capital employed in the enterprise. It could agree, if it had the authority so to do, to take a definite amount of water for a definite length of time and at a definite price. The last would be obviously as important as either of the other two.

Undoubtedly there was authority in the City of Danville to agree for the term fixed in this contract, thirty years. No one disputes that. No one, so far as we know, disputes its right to fix the amount of water it would take during this definite term. The only dispute is as to its right to agree upon the rate it would pay.

If we take the first Act referred to by the Supreme Court of Illinois, where the authority is granted "to contract with such incorporated company for a supply of water for public use for a period not exceeding thirty years," one could hardly doubt that this language meant to embrace authority for all of the usual elements of such contract. Surely it was not meant to give to the City of Danville the right to contract for a supply of water and to prohibit it from fixing what that supply should be. Surely it was not meant that while it could agree to have some water supplied for as long a term as thirty years, it could not agree as to how much water was to be supplied to it during this period. But if it is obvious that it could contract for a definite supply for a definite term, it is certainly a most strained construction to say that it could not contract as to how much it should pay for such supply for such definite term. In other words, that it was so

hampered that it could not agree as to the price, when it could agree as to the amount and time.

It may well be that knowing there was a certain profit to the Company in supplying the citizens, the City desired to take advantage of this fact to contract that the water furnished to it should be furnished at a lower rate than the Company could afford to furnish it if there were to be no other customers.

We take the liberty of stating an instance of this within our own knowledge. The Louisville Gas Company was, in the year 1888, granted the exclusive privilege of furnishing gas to the City and citizens of Louisville, and the price at which it should furnish the citizens was fixed. As to the City, it was provided that gas should be furnished to it at cost, and the right of the City to have street lamps put along its highways at different points was amply provided for. Here, then, is an instance where the Legislature secured from a private corporation a bargain obviously favorable to the municipality, because the corporation, the enterprise not being a new one, believed that it could, out of the price which the private consumers were to pay, make enough profit to enable it to furnish a large proportion of its product to the City without any profit at all. We think, therefore, that one could not doubt that ordinarily the right given to a corporation to contract for a supply of water for public use for a period not exceeding thirty years, would involve not only the right to contract for the time during which the water should be supplied, but also the amount of water and the price.

But let us turn to the other authority which the Supreme Court of Illinois properly says is to be read in *pari materia*. There the municipality is authorized to provide for a supply of water by the construction of water works, and is further empowered "to authorize any person or private corporation

to construct and maintain the same at such rates as may be fixed by ordinance and for a period not exceeding thirty years." Here, too, the question of amount is not stated in the authority. Power is given to fix the period and to fix the rate, but, obviously, as we have argued, the Council must have had the right to fix the amount of water to be furnished. What meaning, then, ought we to give the words, "at such rates as may be fixed by the ordinance?" Are they to be construed as meaning, "as may be fixed by ordinance from time to time," or, "as may be fixed by ordinance for a period of time not exceeding thirty years?"

The Danville Water Company came to contract with the City of Danville. It found that it had authority to contract for a supply of water for a period not exceeding thirty years and to contract for a supply of water at such rates as might be fixed by ordinance. Thereupon, in perfect good faith, both parties agreed upon a contract which fixed by ordinance the amount of water to be furnished to the City, the time for which it should be furnished to the City, and the rate at which it should be furnished to the City. Now, the Supreme Court of Illinois, in 178 Ill., p. 312, says that this language "at such rates as may be fixed by ordinance" means at such rates as may from time to time be fixed by ordinance. It is obvious that it is only by interpellation that such construction can be given to this language. Upon its face it bears no such construction. Upon its face it is a direct legislative grant of authority to the City Council to contract for a period of thirty years at a rate to be fixed by ordinance.

We submit that we have shown that the first Act, while giving direct authority to contract for a period of thirty years, by necessary implication gives the authority to contract for the amount of water to be supplied and the price at which it should be supplied. The second Act, we submit, expressly

authorizes the City to contract for a period not exceeding thirty years, and to fix the rate and, by necessary implication, to prescribe the amount of water it will pay for. It is a curious result that the giving of the express right to fix the rate by the second Act is made by the Court the occasion for limiting the power of the municipality within narrower bounds than such authority would have existed under the first Act, which does not mention the rate at all.

In conclusion upon this point we respectfully submit that no person having this warrant of authority before him could have supposed that it would permit the interpretation now put upon it by the Court, or that its effect would prevent the City Council from bargaining for a fixed rate during the entire term of the contract. If the City were to deal upon business principles such a power was manifestly essential.

The Water Company may well have agreed to take a rate during the first few years less than a reasonable rate, upon the idea that such rate through the whole term would be a reasonable rate. And, again, the City amply protected itself from imposition by retaining the right to purchase the plant at any time after five, ten and twenty years, as well as when the contract would, by its terms, expire. The insertion of the words "from time to time" is interpellation and not interpretation, is reconstruction and not construction.

Reasons For Holding That the Contract Was Invalid.

The learned Court seems to lay great stress on the argument that this contract must be regarded as invalid and beyond the power of the City of Danville, because it was the bargaining away of the legislative power of future councils. We have heretofore adverted to the difference between the legislative and contractual power of a municipal coun-

cil. The briefs on file cite many authorities pointing out this distinction, and also many authorities showing that, under language nothing like so broad as this, municipalities have been adjudged to have power to contract for long periods of time for lighting the highways and for supplying water to the public and individuals.

This Court has held that the Legislature can establish a monopoly in a bridge, in a water company, in a gas company; can, if words are aptly chosen, disable itself from regulating the rates of fare and freight of public carriers, and exempt property from taxation or commute such taxation. All these are instances which would fall strictly within what the Supreme Court of Illinois seems to consider as bargaining away of legislative power. It is, however, a misnomer to speak of a contract made, either by a State or a municipality, running for a term of years, by which it contracts to pay upon the one hand, and the other parties contract either to labor or supply for a definite time, as bargaining away of legislative power. There is to us no distinction between bargaining away the power of a future Legislature or Council and the bargaining away of the power of the present Legislature or Council. In other words, there is no reason why the Legislature or Council can not so contract as to bind a future Legislature or Council, if it can so contract as to bind itself in its own future legislation.

There are certain things which cannot be bargained away, involving, as they do, such duties to society that no contract can interpose itself against their fulfillment. The public health, public safety, public morals, all these are subjects upon which both legislatures and city councils must be free, from time to time to deal, and it has everywhere been recognized that neither legislatures nor city councils can disable themselves from passing such laws or ordinances on these

subjects as public emergency may exact. But these subjects have, by the courts, been excepted out of the general rule appertaining to legislation, and form no basis for an argument in a case where what has been done was in the interest and necessary advancement of the health and convenience of the community.

The learned Court seems to admit that it was competent for the City of Danville to contract for thirty years and make a grant of an easement in its highways to this Water Company for that length of time, and we find no objection made to this contract in so far as it fixes the amount of water which the City shall buy annually from this Company. The only fault is in the amount which it shall pay from time to time. But where is the distinction between bargaining away the right of future councils to control the highways and to control the amount of water which the City will take from this Company, and bargaining away the right to fix the amount that is to be paid for this supply of water.

Has This Contract Been Lawfully Changed or Abrogated?

We have thus far considered, first, that the City of Danville and the Danville Water Company intended to contract. Second, that the City of Danville had authority to contract, and, third, that the contract was not invalid as being an unlawful abrogation of legislative authority. It now remains to consider, assuming that this was a valid contract when made, did the City of Danville have the right to change its terms by prescribing a different amount which it should pay for the water supplied to it from that contained in the original contract?

The Danville Water Company was formed under the General Incorporation Laws of the State of Illinois. Section 9 of that law provides as follows:

> "The General Assembly shall at all times have power to prescribe such regulations and provisions as it may deem advisable, which regulations and provisions shall be binding upon any and all corporations formed under the provisions of this Act." (1 Star & Curtis Annual Statutes, 2 ed., p. 1006.)

The contract here sued on was made November 11, 1882, and the various supplemental contracts between that date and October, 1894. All of the supplemental contracts, however, are based upon and issue out of the provisions of the original contract.

On June 6, 1891, the Legislature of Illinois passed an Act which is given in full on page 34 of Mr. Fry's brief, counsel in the Freeport Water Company case.

This Act provides that "the corporate authorities of a city . . . . of this State in which any corporation has been, or hereafter may be, authorized by such city . . . . to supply water to such city . . . . and the inhabitants thereof, be and are hereby empowered to prescribe by ordinance maximum rates and charges for the supply of water furnished by such . . . . corporation to such city . . . . and the inhabitants thereof, such rates and charges to be just and reasonable."

It was under the authority of this law that the City of Danville passed the ordinance relied on by it herein, and which is dated January 19, 1895. (R., 88.) This ordinance reduces the rates to be paid by the City for the fire hydrants below the price fixed by the original contract.

That this legislation of the State of Illinois and this ordinance violates the obligations of a contract and deprives

the Danville Water Company of its property without due process of law, is a proposition which must necessarily be maintained by us if we succeed in reversing the judgment of the Supreme Court of Illinois. All other questions raised by the pleas of the City of Danville have been eliminated by the Supreme Court of Illinois. (The City of Danville vs. Danville Water Company, 178 Ill., 315, and same vs. same, 180 Ill., 244, where the demurrers of the fourth and fifth pleas are disposed of.) The third plea, that of tender, was abandoned. (City of Danville vs. Danville Water Company, 178 Ill., 303, at bottom of page.)

The learned Supreme Court does not seem to be exactly agreed as to whether the Act of 1891 is to be considered as an amendment to the charter of the Danville Water Company. Some language used in the first opinion (178 Ill., 306) might be construed as holding that it did operate as an amendment. On the contrary, the first part of the opinion in 180 Ill., 241, seems to positively oppose this view, while the opinion *per curiam* in Freeport Water Co. vs. City of Freeport, 186 Ill., 179, would seem again to support such a contention. But this is not very material. The question at last is, whether under the language quoted it was competent for the Legislature of the State of Illinois to authorize the City of Danville to pass the ordinance in question, and as to whether this ordinance was valid.

The ordinary power which is reserved by the Constitution or statutes of the various States to alter, amend and repeal the charters of corporations has never, so far as we are aware, been construed to mean that the Legislature, after authorizing a corporation to make a particular kind of contract, and after such a contract had been made, can repeal the contract, or abrogate it or prevent its enforcement. The question as to whether the charter of a corporation can be taken away from

it, its authority to conduct any business cancelled or limited, and restrictions upon its power to contract enlarged; all these are questions totally distinct from the right of the Legislature, after a corporation has made a contract under authority, to interfere with such contract and license its violation.

We suppose it would hardly be contended in reference, say, to a banking corporation, that the Legislature, under a reserved power to alter, amend or repeal its charter, could provide that the notes given to the bank for money loaned by it, or the security taken for obligations of its debtors, should cease to be valid or obligatory. And the same is true in reference to property acquired or contracts made by any other corporation. The Legislature having reserved to itself power, may prevent the corporation from acquiring additional property or making new contracts, but under the power reserved to repeal, alter or amend articles of incorporation, it has never been contended, so far as we know, that contracts in existence when the Legislature exercises this power are in any way affected by such exercise. This would not only be the palpable violation of the obligations of a contract, but it would be the taking of private property for public use without compensation. The Legislature has the right to limit the power of individuals to contract, it has the right to make contracts which are innocent to-day, unlawful to-morrow, but when the individual has made a contract, lawful at the time it is made, the Legislature cannot, by the exercise of any power, probably excepting the police power, prevent the enforcement of this lawful contract. The power which the Legislature reserves of repealing, altering or amending charters, is not different in principle from that which it has over the dealings of private individuals. It no doubt is larger because the Legislature can, under such reserved power, repeal an act of incorporation and thereby prohibit the cor-

poration from making any new contracts of any kind whatever, whereas the Legislature cannot absolutely prohibit an individual from making contracts.

Ordinarily an individual is *sui juris* and capable of making contracts when he is twenty-one years of age. We know of no constitutional objection to any State passing a law saying that after a named date no one shall be capable of contracting who is not twenty-four years of age. But surely the Legislature could not say that contracts made before such a law took effect by persons over twenty-one and under twenty-four were invalid, or that notes given for money loaned, or securities taken or property otherwise acquired should become forfeited to the State.

So much then for the contracts of corporations not engaged in a public or *quasi*-public business and the contracts of individuals. What greater power now has the Legislature over the present and future contracts of persons or corporations engaged in a public or *quasi*-public business? Has the Legislature fuller power to interfere with contracts already made by corporations of this character, or individuals engaged in this character of business, than it has over contracts already made by individuals or corporations engaged in private business?

The language of the Act we are discussing is this: "The General Assembly shall at all times have power to prescribe such regulations and provisions as it may deem advisable, which regulations and provisions shall be binding upon any and all corporations formed under the provisions of this Act." There is here no power to repeal a charter that has been formed under this Act, nor to alter it, nor to amend it. There is simply the power to prescribe regulations and provisions such as the General Assembly may deem advisable and the statement that such regulations and provisions shall be

binding upon all the corporations formed under the provisions of this Act.

The character of regulations that may be prescribed are well stated on pages 94 and 95 of Mr. Fry's brief, and the character of regulations which could not be made. Coming, however, to a public corporation formed under this Act, such as a gas company, water company, telephone company or electric light company, the business of all these corporations has been held by the courts to be *quasi*-public and subject to certain regulations. We suppose there is no sound distinction between the right of the Legislature to regulate the charges of a gas company, a water company, an electric light company and of an elevator company, but even in these cases there is not an unlimited power to regulate.

There is no more reason for saying that the rates of freight and fare to be exacted by a railroad can not be reduced below a certain limit without violating that provision of the Constitution which prohibits the taking of private property without compensation, than there is to say the same thing in reference to regulations of these other companies.

The question at bar is: Can these regulations be made retroactive? Can a corporation of a *quasi*-public character be deprived of the benefit of a contract which it has made by an Act which shall regulate the charges it is to be allowed thereafter to make? A railroad company chartered by the State, without any right to regulate its own charges of fare and freight, is so far under the legislative control that these charges can be fixed, in some way, by some legislative or judicial body, or both combined, provided such rates are not by the public body, legislative or judicial, made confiscatory in their character. But take the case of a railroad so chartered which has, under the authority granted to it by its

charter, made a contract for transportation of persons and property, which contract is in part executed, and in part to be executed, can the Legislature apply its new rate to such a contract?

Suppose that the State of New York, when about to erect its Capitol, had agreed with the New York Central Railroad Company to transport all of the material to be used in the erection of that building at a certain rate. Obviously the Legislature would have had the power to do that, the same power that it would have had to purchase the necessary material. It might have been wise to let a David gather and a Solomon build. Now, assuming that the New York Legislature had the power to regulate the fare and freight of the New York Central Railroad, could it be claimed that after making this contract it could provide that thereafter the New York Central Railroad should not charge any individual or corporation, or the State itself, more than a certain rate and apply this to its existing contract?

In the case at bar we have a contract made by the City of Danville and the Danville Water Company to last for thirty years. This contract was made in 1882 and will expire in 1912. We will assume that the Danville Water Company agreed upon a rate at which it would furnish the fire hydrants less than what was then a reasonable rate, because it believed that taking the whole period through the rate would be reasonable. This contract having been thus lawfully made, authority having been reposed by the State in the Danville Water Company and the City of Danville to make this contract, can the Legislature, under the power to prescribe such regulations and provisions as it may deem advisable and make them binding upon any and all corporations formed under the provisions of its General Incorporation Act, give to the City of Danville the power to abrogate this con-

tract and fix or name a price which it is to pay the Danville Water Company? The existence of such a power has, so far as we know, never been before asserted.

In all the cases which have been before this Court upon the right of the Legislature of the various States, or commissions formed under their authority, to regulate rates of public and *quasi*-public companies, there has been thus far no suggestion that there was a power to interfere with any contract in reference to these rates which had been lawfully entered into prior to their attempted regulation. It will certainly, we submit, be a very wide extension of this power to declare that it shall exist not only for the future, but that there is in it the potency of controlling transactions which have been entered into in good faith and with lawful authority prior to the time the new regulations are enacted.

We respectfully submit, therefore, that there is no ground upon which this Act of the Illinois Legislature and this ordinance of the City of Danville can be distinguished from other efforts to repudiate and abrogate contracts which have been entered into between parties capable of contracting, which were valid when they were made and against which no suspicion of fraud or unfairness can be raised.

Respectfully submitted,

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